

**IN THE ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH  
NEW DELHI.**

OA No.292 of 2011

Ex.Sep Rambir Singh ...Petitioner

Versus

Union of India & others ...Respondents

For the Petitioner : Mr.S.S.Pandey, Advocate  
For the Respondents: Mr.Ajai Bhalla, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON  
HON'BLE LT.GEN.S.S.DHILLON, ADMINISTRATIVE MEMBER

**ORDER**  
**10.10.2012**

1. Petitioner by this petition has prayed that the letter dated-10.6.2011 and the Pension Payment Order dated-0314/2011 issued by the Respondent may be quashed and the applicant should be granted disability pension @ 50% from the date of his discharge from service along with the arrears and 12% interest and also to impose heavy cost on respondents.

2. This is a second round of litigation. The petition was enrolled on 31.12.1972 and he was discharged on receiving an injury on left knee with 30% disability. Thereafter, on 30.9.1983, petitioner sought voluntary discharge and prayed for the disability pension which was denied to him. Therefore, he was driven to file a petition before this Court and this Court by its order dated-14.9.2010 allowed the petition and its Para -5 reads as under:

*"However, so far as the present case is concerned, applicant's disability was assessed @ 30% for a period of two years, therefore, he was entitled to the pensionary benefits for two years as per Regulation 173(a) which was in force at the relevant time, was applicable to PBOR. So far as the persons below officers rank are concerned, the condition was not there that they will not be entitled to disability pension. So far as the case of Ajay Wahi is concerned, it is not related to persons below officers rank and it is related to Officers. Be that as it may, but the facts remains that incumbent's disability was for a period of two years at the time of seeking voluntary discharge. The Regulation 173 (a) as it stood the incumbent is entitled to two years disability pension @ 30% which was denied to him. So far as the future case is concerned, applicant may be summoned by the Authorities in the light of the Notification dated-29<sup>th</sup> September, 2009 and he may be examined. Future payment will depend on the recommendations of the Review Medical Board. Respondents are directed to work out the arrears of two years disability pension i.e. from 30.09.1983 and same shall be paid to applicant with 12% interest within a period of two months. The petition is allowed in part. No order as to costs."*

3. Thereafter, the petitioner was issued a PPO in which the petitioner was allowed service element @ Rs.160/- from 1.1.1983 to 12.7.1985 and disability element @ Rs.13.50 p.m. from 1.10.83 to 12.7.1985.

Thereafter the petitioner was again sent for medical board and medical board again found the petitioner suffering from 30% disability on 9.2.2011 and they granted a disability element @ Rs.1053/- p.m, but service element of pension was not granted

4. The grievance of the petitioner is that service element has not been paid to him despite that it has been mentioned in the PPO No.0314/2011. Therefore, the petitioner has requested that on the basis of Review Medical Board he is entitled to service element of pension along with the disability pension.
5. A reply has been filed by the respondent and respondent has taken the position that since the petitioner has not completed a full tenure of service i.e. 15 years, therefore, he is not entitled to service element. The contention of the respondent is not well founded. As per the Regulation 173 of Pension Regulations for Army which clearly says that the disability element will always be read with service element. The Regulation 1973 of Pension Regulation for Army reads as under:

*"Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 percent or over."*

6. As per the Regulation 173 where it is clearly mandated that along with disability pension the service element will also required to be paid and the contention of the counsel for the respondent that since the petitioner has not put in full tenure of service, therefore, he is not entitled to service element appears to be totally misconceived. This Regulation 173 appears in Chapter-3, but under the section-4 of Chapter -3 under the heading Disability Pensionary Awards. Therefore, under the Pensionary Awards, the incumbent is entitled to service element along with the disability element. Though there was some controversy about it earlier, but that has been put to rest by order dated -22.2.2012 which has been incorporated in the order of the Hon'ble Supreme Court given in the Civil Appeal No.2942 of 2009 which reads as under:

*"MINISTRY OF DEFENCE*

*Department of Ex-Servicemen Welfare*

*Subject: SLP No.20868/2009 titled UOI Vs. Ex Gnr Sinchetty Satyanarayan & 42 Others*

*The issue regarding grant of service element to those invalided out prior to 1973 with less than minimum qualifying service for pension as prescribed from time to time, has been considered in the Ministry and with the approval of Hon'ble RM it has been decided to grant the benefit of service element to all pre 1973 cases w.e.f.1.1.1973.*

2. *OIC Legal Cell (Supreme Court) may take appropriate action to tile the reply affidavit in the matter in the Hon'ble Supreme Court,*

*Sd/-  
(Ajay Saxena)  
Under Secretary "*

6. Therefore, now this controversy is no more resintegra, because the Government has also clarified that the persons who were not getting the service element of pension because of lack of minimum qualifying service for pension they will also be entitled to w.e.f. 1.1.1973. In this back ground, the contention of the learned counsel for the respondent cannot be sustained. As such petitioner is entitled to service element of pension also.
7. Now the question is whether the petitioner is entitled to pensionary benefits from the 1985 to 9.4.2011 or not. So far as this period is concerned, the petitioner has not made any representation whatsoever, except filing an earlier petition before this tribunal, which was allowed and directions were given for Review Medical Board and same has been already reviewed the case of the petitioner and found disability to the extent of 30% and pensionary benefits has been released to him. But only thing which has been left out was that he is denied the service element of pension which we have discussed above and found that he is entitled to. Therefore, the petitioner will be entitled to the disability pension @ 30% from 9.2.2011 along with the service element which has been denied to the petitioner.

8. The second question is with regard to the service element for the period from 1985 to 9.2.2011. Though initially the disability was only for the period of two years, therefore, we granted him the benefit of 1.10.1983 to 12.7.1985, but thereafter, he did not approach for Review Medical Board. Therefore, the question is that since has not asked for Review Medical Board, can he get the service element of pension or not, though the disability pension was not paid to him after 1985. In this connection, the learned counsel has invited our attention to para 186(2) which says that even if the disability has gone below 20%, still the incumbent will be entitled to service element of pension. The Regulation 186 reads as under:

186 (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 percent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 percent. He shall, however, continue to draw the service element of disability pension.

9. That means even if as per the sub-clause (2) of 186 which clearly contemplates that if individual who was initially granted a disability pension but whose disability is reassessed to below 20% subsequently shall cease to draw disability element of pension from the date it falls below 20%, however he shall, continue to draw service element of

pension. In view of this provision, even if the disability is reduced to below 20%, the service element will continue to be paid to him. He was not paid the service element of pension from 1985 to 2011. Therefore, we decree this part of service element of pension in favour of the petitioner in view of the provisions of Regulation 186(2).

10. Next question is with regard to rounding of the disability pension @ 50% because he has been undergoing disability @30%. In this connection, learned counsel has invited our attention to the Regulation 173(a) read with order dated 27.5.2002.
11. We have bestowed our best of the consideration on the submission, since petitioner has put in four years of service only and sought a voluntary discharge, therefore, he will not be entitled to rounding up of benefit. The rounding up benefit is only entitled to a person whose services are cut short because of the disability and he is invalidated out of service. In this connection, our attention is invited to the decision of the Hon'ble Supreme Court given in the case of *P.K.Kapoor Vs. Union of India [2007 (9) SCC 425]*. In para -12 of the judgement of the Hon'ble Supreme Court, the lordships had occasion to examine this aspect i.e. the enhancement from 30% to 50% and their lordship observed that

“the enhancement from 30% to 50% in this case shall be applicable to those officers who stood invalidated out of service and this will not be applicable to those persons who retired on superannuation prior to 1.1.2006. The appellant was not invalidated out of the service and he completed his normal tenure of service. The benefit of rounding up is given to those officers who stood invalidated out of service because of their tenure of service was cut short due to invalidment on account of disability or war injury, therefore, appellant do not fall in the category of invalidment”. Similar view has been taken by the Hon’ble Supreme Court subsequently in the case of ***Union of India & Ors Vs. N.K. Narikar (C.A No.8433-8434 of 2009)*** wherein their Lordships have reiterated the principle which has been enunciated by their Lordship in the case of ***P.K.Kapoor Vs. Union of India [Supra]***. But unfortunately it appears that the decision given in the case of ***K.J.S. Buttar Vs. Union of India and Anr. [JT 2011 (3) SC 626]*** was not brought to the notice of the Hon’ble Supreme Court in the subsequent decision in the case of ***Union of India & Ors Vs. N.K. Narikar (Supra)***. In the case of ***K.J.S. Buttar Vs. Union of India and Anr (Supra)***, their Lordships have relied on Regulation 173(a) where it has been said that even if person is released with medical disability, he shall be deemed to have been invalidated out of service.



But unfortunately, in *K.J.S. Buttar Vs. Union of India and Anr (Supra)* the decision given in the matter of *P.K.Kapoor Vs. Union of India [Supra]* was not sighted and in the case of *Union of India & Ors Vs. N.K. Narikar (Supra)*, the judgement of *K.J.S. Buttar Vs. Union of India and Anr (Supra)* was not sighted. So the situation is very fluid. However, the decision given by Hon'ble Supreme Court at the latest point of time in the case of *Union of India & Ors Vs. N.K. Narikar (Supra)*, which was decided on 25.5.2012, will prevail. Therefore, in view of decision given by the Hon'ble Supreme Court in the case of *Union of India & Ors Vs. N.K. Narikar (Supra)*, we don't agree with the learned Counsel for the petitioner and hold that petitioner will not be entitled to the benefit of rounding up.

12. As a result of above discussion, we direct that the petitioner is entitled to service element of pension from 13.7.1985 to 9.2.2011. Thereafter, from 9.2.2011 as per the recommendations of the review medical board as review medical board has found that he is suffering from 30% disability for life, therefore, he is entitled to a disability pension along with the service element of pension from 9.2.2011. Petitioner will be entitled to 12% interest on the service element of pension from 9.2.2011.

13. Petition is allowed in part as indicated above. No order as to costs.

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[Justice A.K. Mathur]  
Chairperson

[Lt. Genl. SS Dhillon]  
Member (A)

New Delhi  
10/12 October, 2012